

DRAFT CUTTING NOTICE GUIDANCE

Response to Comments

September 2016

Thank you to all of the individuals and groups that provided feedback on the Department of Natural Resources proposed new guidance to be included in Chapter 20 of the Forest Tax Law handbook, related to the Cutting Notice and Report.

Comments Received:

Public – 4 DNR – 3

Comments and Responses

Editorial Comments

Commenters offered editorial suggestions and corrections to make the language in the document more clear and consistent.

Response: Where deemed appropriate, suggested editorial corrections were incorporated into the final guidance document.

A. Filing of Cutting Notice

A1a Comment: Give examples of what is “not complete”. Would not including a map, or not addressing NHI or not addressing BMPs make it incomplete? It may also be helpful to clarify that the DNR FR is not expected and should not complete and NHI review if it comes in blank.

A1b Comment: Include “complete” in the following sentence for listing the required information to be provided on the cutting notice. "The following underlined items are required to be provided on the cutting notice to be considered complete and expedite approval."

Response to A1a and A1b: *The cutting notice guidance includes a list of items that must be addressed in order to be considered complete upon submittal. The cutting notice guidance has been clarified, and now states ‘For a cutting notice to be considered complete the following underlined items must be addressed’.*

*Clarification was also made in Step 3 and 4 under “**CUTTING NOTICES THAT DO NOT REQUIRE DNR APPROVAL**” regarding the role of the DNR Forester in addressing incomplete cutting notices that do not require DNR approval.*

A2 Comment: The following underlined items are required to be provided on the cutting notice. WWOA notes that checkboxes above the landowner's signature on the Cutting Notice requesting that the DNR review and approve or DNR review but not approve the Cutting Notice have been left off of this list of required items. We do not support removing these check boxes.

Response to A2: *The cutting notice is currently being updated. This update does not remove the option for landowners to request DNR review of the cutting notice. All cutting notices will be evaluated to determine if review is required (see Initial Evaluation of the Cutting Notice section).*

A3 Comment: Attach a Map – The cutting notice form should state that attaching a map is Mandatory – many come in without them, the hand book language is clear.

Response to A3: *The cutting notice guidance includes a list of items that must be addressed in order to be considered complete upon submittal This list of items includes attaching a map. The cutting notice guidance has been clarified, and now states ‘For a cutting notice to be considered complete the following underlined items must be addressed’.*

A4 Comment: Include additional required information for Cutting Prescriptions to include; adequate steps have been documented to ensure full target regeneration for all prescribed regeneration harvests. This would coincide with the section, “Criteria For Which No Field Review Is Needed (must meet ALL criteria listed below):” to help document any pre/post-sale treatments that will be implemented outside of the commercial timber sale.

Response to A4: *The department added ‘and regeneration’ to the list of items used to describe the cutting prescription.*

A5 Comment: Further clarification or guidance on the process to refer customers to the Natural Heritage Conservation Program for NHI information is needed as the handbook currently states that “...at the time of this writing, eligible individuals include landowners, CPW’s and trained Cooperating Foresters; all other requests should be referred to the Natural Heritage.”

Response to A5: *These statements do not ask for a procedural change nor reveal the need for further policy clarification. This section references Appendix 10, which elaborates on the process of obtaining and sharing NHI data.*

B. Unmarked Pine Thinning Policy

B1 Comment: WWOA does not support the Forestry Operations Teams's resolution that DNR Foresters should approve cutting notices for routine unmarked pine thinnings, in the interest of efficiency and economy. We question whose efficiency or economy this best serves? Since these are by definition "unmarked" how is a DNR Forester to determine which proposed thinnings are sustainable vs unsustainable? What impact will this resolution have on the group certification program for non-industrial forestland enrolled in the Managed Forest Law? Also at the end of this section, DNR notes that once again, the landowners hold all the responsibility to administer all unmarked pine thinnings. The MFL program was to be a partnership between the landowners and the DNR, with the DNR providing technical assistance to ensure the enrolled forests are sustainable. By encouraging this practice, you leave the landowner vulnerable in timber theft/damage cases because without marking paint the chances of resolving these cases after the fact in court is very limited.

Response to B1: *The request for public comment concerned proposed changes made to the cutting notice approval process. The statement regarding the department’s policy on unmarked pine thinning does not ask for a change in the process or reveal that clarification of the process is needed. The policy does not change any rights, risks or responsibilities of the landowner. The department appreciates WWOA’s comment regarding the unmarked pine thinning policy.*

C. Cutting Notice Steps:

C1 Comment: As a DNR forester I often receive requests from consultant foresters I work with to send the original copy of the MFL CN to them & not the landowner. The revisions in ch 20 still contain the same verbiage to send the original CN to the landowner (see #3 on pg. 20-74 & #7 pg. 20-75). Does it matter who gets the original MFL CN once it is processed / approved? Maybe this is not the place to have this discussion? Thanks for your consideration either way.

Response to C1: *The original cutting notice should be returned to the landowner with a copy sent to the person who submitted the cutting notice as stated in the process outlined in the guidance.*

D. Initial Evaluation of the Cutting Notice

D1 Comment: Commenter indicated no support for automatic approval of cutting notices.

Response to D1: *No response needed.*

D2a Comment: There is currently an understanding that if a person whose name appears on the CN Registration list submits a CN, cutting may begin as soon as it is received by the DNR forester. The proposed guidance did not change the 30 day prior to cutting requirement. This needs to be addressed. Land managers need to know at what point they can begin cutting. Act 358 guidance does not address this except that DNR must notify the person who filed the CN by the end of the next business day but only for CN requiring DNR approval. A reasonable amount of time needs to be given for the CN reviewer to determine whether the CN needs approval or not.

D2b Comment: An additional statement may be warranted in step 6 of the Cutting Notice Steps for the Forester/Logger/Landowner TO NOT initiate cutting until the Cutting Notice has been acknowledged or approved. See further comments below for clarification.

D2c Comment: Can cutting begin prior to the DNR forester acknowledging/processing a notice that DOES NOT REQUIRE DNR APPROVAL? I see a potential conflict if a person whose name appears on the Cutting Notice Registration List assumes that they have submitted a cutting notice proposing cutting that is under the terms of the management plan that will not need review and initiates cutting before validating that the notice has been acknowledged. Does this constitute Cutting Without an approved Cutting Notice?

Response to D2a, D2b, and D2c: *Act 358 did not change the requirement to submit a cutting notice 30 days prior to harvesting. The 30 day requirement is not intended to be a waiting period. If the cutting notice is submitted by a person who is listed on the Cutting Notice Registration List and the proposed cutting is required under the terms of the management plan and the landowner has not requested department approval, cutting may commence upon submittal of the cutting notice. This has been clarified in this section with the addition of the following language:*

“If approval is not required, cutting may commence following the filing of the Cutting Notice Form. However, it may be advantageous for the landowner and / or submitter to defer cutting until the DNR has confirmed that the form has been received and that DNR approval is not required.”

D3a Comment: The wording in the FAQ's for CN approval policy. The third question, second paragraph says that if the proposed cutting "is not under the terms of or conforms to the management plan, the CN is subject to review and approval by DNR. In these situations, the DNR forester must approve the notice regardless of who submitted it." This does not appear to be correct. Why would the DNR forester have to approve the notice in this situation?

D3b Comment: Statement is confusing "...Cutting Notice is not under the terms of and conforms to the management plan" I believe it would read better and be less confusing if it was stated as follows: "...Cutting Notice is not under the terms of and does not conform to the management plan" (At least I think that is the intended meaning of the statement)

D3c Comment: Initial Cutting Notice Evaluation: It would be helpful to add some explanation/examples to determining whether cutting is "under the terms of and conforms to the management plan". (e.g. harvest dates are within 3 years of plan, harvest prescription matches plan, etc.). What about if the plan identifies an NHI hit on property that may require a seasonal restriction – but the cutting notice does not address it at all, is that under the terms of the plan?

Response to D3a, D3b and D3c: *The phrase 'if the proposed cutting is under the terms of or conforms to the management plan' has been modified to align more closely to the language contained in the law. The policy language now states 'if the proposed cutting is required under the terms of an approved management plan'.*

In addition, steps 3 and 4 were added and clarified in the section that addresses cutting notices that do not require DNR approval to address how NHI and other concerns that may arise when evaluating a cutting notice that does not require DNR approval should be handled and how landowners should be notified of potential issues.

The statement 'in these situations, the DNR forester must approve the notice regardless of who submitted it' has been deleted from the FAQs. The FAQs will be updated to reflect this change.

D4 Comment: Determining whether the Cutting Notice requires Department approval. WWOA representatives Steven Ring, Dave Congos and Nancy Bozek met on May 23, 2016 with Division of Forestry representatives, Paul DeLong and Ron Gropp, to discuss the new Tax Law Dispute Resolution Process. During this discussion, we were assured several times by Paul DeLong that even if a woodland owner did not check the box for DNR review of the Cutting Notice, if at any point in the process the landowner would like to request DNR review and approval of the cutting notice that all the landowner would need to do is contact the DNR Forester. The DNR Forester would then be required to fulfill this request. The landowners should not have to go through the person that submitted the cutting notice and complete a new Cutting Notice. The landowner should be able to call or email the DNR Forester to make this request. The DNR Forester could simply note this request on the Cutting Notice.

Response to D4: *This statement does not ask for a procedural change nor reveal the need for further policy clarification in this document. The proposed guidance clarifies the DNR Forester's role in the Cutting Notice approval process.*

E. Cutting notices that DO NOT REQUIRE DNR APPROVAL

E1a Comment: If the cutting notice DOES NOT REQUIRE DNR APPROVAL - #7: This is very helpful to provide guidance on how to pursue complete info. However, in many circumstances the landowner and the submitter may elect to not provide additional clarification/information. (e.g. portions of CN are left

blank, DNR FR requests info from submitter and landowner and gets no response). Guidance should be added for how to handle this circumstance. Is the forester then required to formally approve / deny (the) notice based on what was submitted and a potential field visit? Or should the forester simply document the attempt to attain additional info in the file and move on?

E1a Comment: Act 358 states that the department shall not restrict an approved CN based on NHI. Is this just the database or does this pertain to an actual on the ground occurrence of endangered resource? If an endangered plant or animal is known to exist, can the DNR restrict cutting?

E1b Comment: Chapter 20 should state that DNR Foresters have an obligation to notify the landowner anytime something is proposed that is out of compliance with their management plan.

Response to E1a, E1b and E1c: Steps 3 and 4 were added and clarified in this section to address how NHI and other concerns that may arise when evaluating a cutting notice that does not require DNR approval should be handled and how landowners should be notified of potential issues.

E3 Comment: Must further define “complete” as used in step 7. of the section...“If cutting notice DOES NOT REQUIRE DNR APPROVAL the DNR Forester or reviewer shall do the following:”

Response to E3: Step 7 does not mention the word ‘complete’.

F. Field Review

F1a Comment: If the Cutting Notice does require DNR approval, the DNR Forester or reviewer shall do the following. WWOA requests clarification on a number of items under the subheading of Criteria For Which No Field Review Is Needed (must meet ALL criteria below). Under bullet point #6 when and how was Master Logger added to this statement and when was "in good standing" removed from the criteria for those involved in sale establishment?

F1b Comment: WWOA questions why the DNR Forester must request their supervisor's approval prior to conducting a field review when all the criteria are met but not when the DNR Forester decides not to do a field review when all the criteria are not met?

F1c Comment: WWOA also requests that DNR clearly communicate to MFL/FAL landowners the criteria it uses to determine whether or not a DNR Forester will do a field site visit when a landowner requests approval of their Cutting Notice.

Response to F1a, F1b and F1c: These statements do not ask for a procedural change nor reveal the need for further policy clarification in this document.